Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES D. GREENFIELD, JOHN M. KACZMARCZYK
and AGNES Y. NGAI

Appeal No. 2004-0689
Application No. 09/186,584

ON BRIEF

Before JERRY SMITH, BARRY, and LEVY, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-35, which are all of the claims pending in this application.

BACKGROUND

Appellants' invention relates to an on-chip dynamic buffer level indicator for a digital video encoder. An understanding of the invention can be derived from a reading of exemplary claims 1 and 9 which are reproduced as follows:

1. In a method of encoding a digital video image stream in an encoder, comprising spatial compression of still images in the digital video image stream and temporal compression between the still images, wherein the spatial compression is carried out by converting a time domain image of a macroblock to a frequency domain image of the macroblock, taking a discrete cosine transform of the frequency domain image, transforming the discrete cosine transformed macroblock image by a quantization factor, and run length encoding the quantized discrete cosine transformed macroblock image, wherein the temporal compression is carried out by reconstructing the quantized, discrete cosine transformed image of the macroblock, searching for a best match macroblock, and constructing a motion vector therebetween, to thereby form a bitstream comprising run length encoded, quantized, discrete cosine transformed macroblocks and motion vectors, and passing the bitstream to and through an external buffer to a transmission medium, the improvement comprising feeding back to hardware logic within the encoder an external buffer read signal from a host and incrementing an on-chip counter of the hardware logic each time that the external buffer is read and calculating therefrom the number of bits read by a host (R), and determining the number of bits encoded and written into an external buffer (E), and in the hardware logic of the encoder subtracting from a number of bits encoded (E) the number of bits read by the host (R) to continuously obtain the fullness of an external buffer (BF), and providing, from the hardware logic within the encoder to the host, a dynamic buffer level indicator in real time indicative of the fullness of the eternal buffer (BF).

9. In a method of encoding a digital video image stream in an encoder, comprising spatial compression of still images in the digital video image stream and temporal compression between the still images, wherein the spatial compression is carried out by converting a time domain image of a macroblock to a frequency domain image of the macroblock, taking a discrete cosine transform of the frequency domain image, transforming the discrete cosine transformed macroblock image by a quantization factor, and run length encoding the quantized discrete cosine transformed macroblock image, wherein the temporal compression is carried out by reconstructing the quantized, discrete cosine transformed image of the macroblock, searching for a best match macroblock, and constructing a motion vector therebetween, to thereby form a bitstream comprising run length encoded, quantized, discrete cosine transformed macroblocks and motion vectors, and passing the bitstream to and through an external buffer to a transmission medium, the improvement comprising feeding back to hardware logic within the encoder an external buffer read signal from a host and incrementing an on-chip counter of the hardware logic each time that the external buffer is read and calculating therefrom the number of bits read by a host (R), and determining the number of bits encoded and written into an external buffer (E), and in the hardware logic of the encoder subtracting from a number of bits encoded (E) the number of bits read by the host (R) to continuously obtain the fullness of an external buffer (BF), and providing, from the hardware logic within the encoder to the host, in real time a dynamically updated flag comprising at least one of a BUFFER_EMPTY flag, a BUFFER_ALMOST_FULL flag and a BUFFER_FULL flag.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Greenfield et al. (Greenfield)	5,760,836	June 2, 1998
Choe et al. (Choe)	6,094,696	July 25, 2000 (filed May 7, 1997)

Claims 1-6, 16-19, 32 and 34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Greenfield.

Claims 7-15, 20-31, 33 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenfield in view of Choe.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 18, mailed April 17, 2003) for the examiner's complete reasoning in support of the rejections, and to appellants' brief (Paper No. 17, filed January 15, 2003) and reply brief (Paper No. 19, filed June 19, 2003) for appellants' arguments thereagainst. Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered.

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the

rejections and arguments in rebuttal set forth in the examiner's answer. Upon consideration of the record before us, we affirm-in-part.

We consider first the rejection of claims 1-6, 16-19, 32 and 34 under 35 U.S.C. § 102(e) as being anticipated by Greenfield. Turning to claim 1, we note that to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirg v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

> Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Thus, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference

are nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581, 212 USPQ at 326; Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986).

The examiner's position (answer, page 5) is that "by having a real time encoding system, real time fullness of the external buffer is maintained every cycle of the encoder."

Appellants' position (brief, page 8) is that "Greenfield specifically describes a non-real time buffer level indicator. In Greenfield, the buffer level indicator is provided dependent upon how often the processor updates the indicator. The hardware described in Greenfield would be incapable of supporting a continuously obtaining application."

The examiner responds (answer, page 9) that "continuous monitoring/obtaining of the fullness of the external buffer BF is required in order to prevent buffer overflow and satisfy the criteria BF<L within Greenfield et al, and with the continuous obtaining of the fullness of the external buffer being determined every cycle of the encoder."

Appellants reply (reply brief, page 2) by arguing "Greenfield et al. is incapable of continuously obtaining the real time fullness of the external buffer. The Greenfield et al. microcode approach to buffer fullness calculation includes a sequence of instructions."

We begin our analysis with claim interpretation. Before addressing the examiner's rejections based upon prior art, it is an essential prerequisite that the claimed subject matter be fully understood. Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 103 begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the prior art. Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988). Accordingly, we will initially direct our attention to appellants' claim 1 to derive an understanding of the scope and content thereof.

Before turning to the proper construction of the claim, it is important to review some basic principles of claim construction. First, and most important, the language of the claim defines the scope of the protected invention. Yale Lock Mfg. Co. v. Greenleaf, 117 U.S. 554, 559 (1886) ("The scope of

letters patent must be limited to the invention covered by the claim, and while the claim may be illustrated it cannot be enlarged by language used in other parts of the specification."); Autogiro Co. of Am. v. United States, 384 F.2d 391, 396, 155 USPQ 697, 701 (Ct. Cl. 1967) ("Courts can neither broaden nor narrow the claims to give the patentee something different than what he has set forth [in the claim]."). See also Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U.S. 405, 419 (1908); Cimiotti Unhairing Co. v. American Fur Ref. Co., 198 U.S. 399, 410 (1905). Accordingly, "resort must be had in the first instance to the words of the claim" and words "will be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently." Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir. 1984). Second, it is equally "fundamental that claims are to be construed in the light of the specification and both are to be read with a view to ascertaining the invention." United States v. Adams, 383 U.S. 39, 49, 148 USPQ 479, 482 (1966).

Furthermore, the general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim must be

followed. See In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978). One must be careful not to confuse impermissible imputing of limitations from the specification into a claim with the proper reference to the specification to determine the meaning of a particular word or phrase recited in a claim. See E.I. Du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 1433, 7 USPQ2d 1129, 1131 (Fed. Cir.), cert. denied, 488 U.S. 986 (1988).

What we are dealing with in this case is the construction of the limitations recited in the appealed claims. As stated by the court in In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) "[t]he name of the game is the claim." Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

We begin with the claim construction principle commonly referred to as the Doctrine of Claim Differentiation, that stands for the proposition that ("Where claims use different terms, those differences are presumed to reflect a difference in the scope of the claims")[1]. Claim 1 recites "continuously obtain,"

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[1] See Donald S. Chisum, Chisum on Patents § 18.03[2][b][iii], at 18-157 (2003) (entitled Other Claims -

while dependent claim 32 further recites "continuously obtaining comprises obtaining the fullness of the external buffer (BF) every cycle of the encoder." Because the language of the claims are different we presume them to be of different scope. Since claim 32 recites that the fullness of the buffer is obtained every cycle, and claim 1 does not include this limitation, we construe claim 1 as having a broader scope than claim 32, i.e., not requiring that the buffer fullness is obtained every cycle. With this claim inter probation in mind, we turn to the teachings of Greenfield. See Forest Laboratories v. Abbott Laboratories, 239 F.3d 1305, 1310, 57 USPQ2d 1794 (Fed. Cir. 2001).

From our review of Greenfield, we find that Greenfield teaches (col. 1, lines 38-39) "FIFOs are unloaded [in] 'real time' for transmission of full motion video." Greenfield also teaches (col. 5, lines 52-56) that "[t]he microcode can then perform the R calculation. In parallel, microcode can also monitor the number of bits encoded (E) and then subtract the amount of data read by the host (R). The result of this calculation (E-R) will determine the fullness of the external buffer (BF)." Greenfield further teaches (col. 6, lines 8-12) that "[t]he amount of time that bitrate is adjusted can be

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differentiation Within a Claim - Consistent Use Within Claim). A copy of the pertinent pages is enclosed with the decision.

changed using microcode depending upon the application. For the best adjustment, this should be monitored every macroblock."

In addition, as noted by the examiner (answer, page 5) Greenfield discloses (col. 5, lines 24-30) that:

> Another factor which can be used to adjust the step size is the fullness of the external buffer, which in real time encoding systems is typically an external FIFO device. By monitoring the amount of data read from the FIFOs and data used to encode the bitstream (E), the bitrate can be adjusted to prevent overflow of the external buffers 51 in a normal operating environment.

Turning to the Declaration of Ms. Agnes Y. Ngai, we have considered the declaration. However, for the reasons which follow, we find that the language of the Declaration is not commensurate with the language of claim 1. The Declaration asserts (page 3) that:

> The Greenfield et al. encoder does not provide any means to continuously obtain the fullness of the external buffer and does not provide a dynamic buffer level indicator in real-time (every cycle) indicative of the fullness of the external buffer.

However, as we found, supra, claim 1 does not require that the fullness of the buffer be obtained every cycle. In addition, although we agree with the Declaration (id.) that:

> In practice, the buffer level indicator in Greenfield et al. would, for example, be returned approximately once per macroblock.

We agree with the examiner that Greenfield teaches the limitation of claim 1 of "continuously obtain the fullness of an external buffer," because Greenfield discloses that the bitrate, which is related to buffer fullness, should be adjusted every macroblock. Since claim 1 does not require that the buffer fullness be obtained every cycle, the rejection of claim 1 under 35 U.S.C. § 102(e) is affirmed. As claims 2-6 and 16-19 were not argued separately, and stand or fall (brief, page 6) together with independent claim 1, the rejection of claims 2-6 and 16-19 is also affirmed. Regarding dependent claims 32 and 34, we agree with appellants that the microcode implementation of Greenfield is incapable of obtaining the buffer fullness every encoder cycle as recited in the claims. Accordingly, the rejection of claims 32 and 34 under 35 U.S.C. § 102(e) is reversed.

We now turn to the rejection of claims 7-15, 20-31, 33 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Greenfield in view of Choe.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467

(1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

We begin with independent claim 9. The examiner's position (answer, page 7) is that it would have been obvious "[to provide] the dynamic buffer flagging system as taught by Choe et al as part of the buffer management within Figure 5 of Greenfield et al for the same well known flag identification purposes as claimed."

The appellants position (brief, page 11) is that "[n]either Greenfield nor Choe continuously obtain and provide from encoder hardware to a host a dynamically updated flag."

The examiner responds (answer, page 11) by arguing "it is considered obvious to provide the buffer flagging system of Choe et al for the buffer management system of Greenfield et al to thereby provide substantially the same if not the same encodings within Greenfield in real time with a dynamically updated flag."

From our review of Choe, we find Choe teaches (col. 2, lines 55-56) "each receive buffer and transmit buffer has an empty signal and a full signal associated with that buffer." Choe also teaches (col. 2, lines 63-64) that "[t]he index register includes a flag bit for each transmit and receive buffer." Choe additionally teaches (col. 3, lines 34-37) that "the microprocessor core is coupled to the buffer management circuit and is configured to receive the interrupt signal."

From the disclosure of Choe, we find that although Choe uses flags to manage transmit and receive buffers, the microprocessor,

or host, is notified by the buffer management circuit through the use of interrupts, not through the use of dynamically updated flags. Because Choe does not teach "providing, from the hardware logic within the encoder to the host, in real time a dynamically updated flag," as recited by claim 9, the rejection of claim 9 under 35 U.S.C. § 103(a) is reversed. As claims 10-15 and 33 are dependent on claim 9, the rejection of claims 10-15 and 33 is also reversed. Because independent claim 27 recites, similar to claim 9, "provide the host in real time with dynamically updated flags," the rejection of claim 27, and claims 28-31 and 35 dependent therefrom, is also reversed. Again, similar to claim 9, dependent claims 7, 8, and 20-26 limit the dynamic buffer level indicator to one of more flags. Accordingly, the rejection of claims 7, 8, and 20-26 under 35 U.S.C. § 103(a) is also reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-6 and 16-19 under 35 U.S.C. § 102(e) is affirmed. The rejection of claims 32 and 34 under 35 U.S.C. § 102(e) is reversed. The rejection of claims 7-15, 20-31, 33, and 35 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136 (a).

AFFIRMED-IN-PART

JERRY SMITH)
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extrinsic evidence is proper when intrinsic evidence cannot resolve ambiguity in claim language), to determine the scope of the claim language."[74]

In *CCS Fitness, Inc. v. Brunswick Corp.* (2002),[75] the Federal Circuit indicated that there were "at least" four ways to overcome this "heavy" presumption.

"First, the claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history. . . . Second, a claim term will not carry its ordinary meaning if the intrinsic evidence shows that the patentee distinguished that term from prior art on the basis of a particular embodiment, expressly disclaimed subject matter, or described a particular embodiment as important to the invention. . . . Third, . . . a claim term also will not have its ordinary meaning if the term 'chosen by the patentee so deprive[s] the claim of clarity', as to require resort to the other intrinsic evidence for a definite meaning. . . . Last, as a matter of statutory authority, a claim term will cover nothing more than the corresponding structure or step disclosed in the specification, as well as equivalents thereto, if the patentee phrased the claim in step-or means-plus-function format."[76]

[*iii*]—*Other Claims—Differentiation Within a Claim—Consistent Use Within Claim.* In interpreting a word or phrase in a claim, courts consider other language in the claim, other claims in the patent, and claims in related patents. The most specific application of this notion is "claim differentiation" doctrine:[77]

"Where claims use different terms, those differences are presumed to reflect a difference in the scope of the claims."[78]

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[74] 175 F.3d at 989-90.

See also Kraft Foods Inc. v. International Trading Co., 203 F.3d 1362, 1366, 53 USPQ2d 1814, 1817 (Fed. Cir. 2000) (citing *Johnson Worldwide*; "A claim term should be given its ordinary meaning unless the specification or prosecution history provide a special, different meaning or definition. . . . There is a 'heavy presumption in favor of the ordinary meaning of claim language.' "); Khedesian v. Bombardier Motor Corp. of America, 55 USPQ2d 1265, 1269 (C.D. Calif. 2000) (quoting *Johnson Worldwide*; "A claim term should be given its ordinary meaning unless the specification or prosecution history provide a special, different meaning or definition. . . . There is a 'heavy presumption in favor of the ordinary meaning of claim language.' ").

[75] CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 62 USPQ2d 1658 (Fed. Cir. 2002).

[76] 288 F.3d at 1366-67.

[77] See § 18.03[6]. Cf. Wright Medical Technology, Inc. v. Osteonics Corp., 122 F.3d 1440, 1445, 43 USPQ2d 1837, 1841 (Fed. Cir. 1997), discussed at § 18.07[7] ("we must not interpret an independent claim in a way that is inconsistent with a claim which depends from it . . . .").

[78] Forest Laboratories, Inc. v. Abbott Laboratories, 239 F.3d 1305, 1310, 57 USPQ2d 1794 (Fed. Cir. 2001).

See also Tate Access Floors, Inc. v. Interface Architectural Resources, Inc., 279 F.3d 1357, 1370,

(Text continued on page 18–159)

61 USPQ2d 1647 (Fed. Cir. 2002) ("a border" in a claim means one or more borders; another part of the claim referred to a "single" layer; "where the patentee meant to constrict the claim to one and only one particular layer, he said so clearly."); Jeneric/Pentron, Inc. v. Dillon Company, Inc., 205 F.3d 1377, 1381, 54 USPQ2d 1086, 1089 (Fed. Cir. 2000) (a patent concerned a porcelain dental restoration composition; the patent's independent claim required ranges of chemical components expressed in percentages; for example, it required 0-1% cerium oxide; properly interpreted, the claim ranges are limited to the precise ranges set forth and cannot be literally infringed by an accused composition ("Sensation"), which contains 1.61% cerium oxide; "This construction, assigning numerical precision to composition ranges, is particularly appropriate when other variables in the same claims explicitly use qualifying language."); Georgia-Pacific Corp. v. United States Gypsum Co., 195 F.3d 1322, 52 USPQ2d 1590 (Fed. Cir. 1999), *cert. denied*, 531 U.S. 816 (2000) (a claim limitation in a patent's claim 11, which required that a gypsum core be "sandwiched" between two sheets of glass fiber mat, properly interpreted, does *not* mean that no gypsum may penetrate to the outside of either glass fiber mat sheet. A contrary interpretation adopted by a district court—that the gypsum remain between the sheets and not penetrate either sheet—was erroneous because, inter alia, claims dependent on claim 11 and claims in a related patent required, in addition to the gypsum being sandwiched between the sheets, that the sheet surface be "gypsum free."); Rodime PLC v. Seagate Technology, Inc., 174 F.3d 1294, 1304, 50 USPQ2d 1429, 1436 (Fed. Cir. 1999), *cert. denied*, 528 U.S. 1115 (2000), discussed at § 18.03[5][e][ii] (a patent's claims (3, 5, and 8), which required "positioning means for moving" a transducer, properly interpreted, require only the transducer moving function expressly recited and do not, as a district court held, require the additional function of thermal compensation that is illustrated in the patent's specification; "the language of claim 11, not asserted in this litigation, supports the reading of claims 3, 5, and 8 to require only a moving function. Claim 11 recites: 'positioning means for moving said transducer means between the tracks on said hard-disk, *said positioning means being formed of selected materials for compensating for any mispositioning arising from thermal effects. . . .*' (emphasis added)."; "the narrower claim 11 adds a thermal compensation function expressly not included in the broader claims 3, 5, and 8. Had [the patentee] intended or desired to claim thermal compensation as a function of the positioning means in the asserted claims, it could have done it explicitly, as in claim 11. The absence of any such explicit language, however, shows that claims 3, 5, and 8 do not include the function of thermal compensation.").

Compare Pickholtz v. Rainbow Technologies, Inc., 284 F.3d 1365, 62 USPQ2d 1340 (Fed. Cir. 2002) ("computer" used in patent's claim is synonymous with "computer systems" used in the written description portion of the patent's specification); Desper Products, Inc. v. QSound Labs, Inc., 157 F.3d 1325, 1337 n.3, 48 USPQ2d 1088, 1097 n.3 (Fed. Cir. 1998) ("prior to" in two claims has the same meaning as "following" in other claims; the patentee "invokes the rule that different words should be interpreted differently, yet it concedes that in other parts of the claims different words should be interpreted the same. For example, the special master found and, [the patentee] concedes, that the phrase 'frequency bands' in [one claim] and the phrase 'frequency intervals' in [another] mean the same thing. [The patentee's] argument based on constructional rules therefore loses much of its force."); Digital Biometrics, Inc. v. Identix, Inc., 149 F.3d 1335, 1347, 47 USPQ2d 1418, 1426 (Fed. Cir. 1998) ("The [patentee's] argument is that because 'active area' was used in some of the claims and not others, the term must have a meaning unique to itself. This argument might have some force if the claims that used 'active area' actually depended from [the claim at issue], but none do. As used here, we disagree with [the patentee's] premise. Just because certain words are used in different claims does not mean that those terms cannot have application elsewhere in the patent.").

See also MediaCom Corp. v. Rates Technology, Inc., 4 F. Supp.2d 17, 32 (D. Mass. 1998) ("different usages in different claims are presumed to have different meanings.").